

*a***MALAYAN BANKING BHD****v.****KUEH SIEW PIN; LOI MEE KING & ANOR (INTERVENERS)***b*

HIGH COURT SABAH & SARAWAK, SIBU  
CLEMENT SKINNER J  
[ORIGINATING SUMMONS NO: 24-173 OF 1998]  
16 MARCH 2001

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**LAND LAW:** *Sale of land - Public auction - Failure of successful bidder to make payment of balance within stipulated time - Whether purchaser entitled to extension of time to make payment - Whether terms and conditions of sale may be varied - Extension of time to pay granted without chargor being notified or given the opportunity to be heard - Whether a curable irregularity under O. 2 Rules of the High Court 1980*

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Two applications were presented before the court, the first applied by the plaintiffs ( the ‘chargee’), who sought *inter alia*, an order that a sale of certain land situated in Sarawak by public auction to two purchasers be confirmed. The purchasers made the second application who sought that they be allowed to intervene in the application to confirm the sale and a declaration that the extension of time for payment of the balance of purchase price for the said property granted by the senior assistant registrar (the ‘SAR’) should not prejudice the confirmation of the sale and entitle the defendant to forfeit the balance of the purchase price paid by the purchasers.

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The defendant (the ‘chargor’), charged its property to the chargee to secure banking facilities granted by the chargee to the chargor. When the chargor defaulted on the repayments, the chargee commenced proceedings for the property to be sold by public auction. The property was sold during a second auction under several conditions of sale approved by the SAR, *ie*, conditions 3, 4, and 6. At the public auction, the purchasers successfully bid for the property and paid the deposit amount while the balance thereof was to be paid on or before 5 May 2000.

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On 2 May 2000, the solicitors for the chargee wrote to the SAR requesting an extension of 45 days to pay the balance purchase price and the SAR granted an extension of 14 days (the ‘first extension’). On 17 May 2000 the same solicitors requested the SAR for another extension (the ‘second extension’) of 21 days until 8 June 2000 which was granted by the SAR. However, it was only on 16 June 2000 that the SAR received the balance purchase price from the chargee.

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The chargor then filed an affidavit opposing the application to confirm the sale of the said property to the purchasers. The chargor complained that the purchasers had breached condition 4 by paying the balance of the purchase price late by reason whereof the whole purchase price should be forfeited. Further, it was not disputed that the chargor was not notified or given an opportunity to be heard before the SAR granted the first and second extensions.

The main contentions submitted by the purchasers why the sale should be confirmed and the objections of the chargor rejected were; i) the conduct of the chargor must be taken to have abandoned his objections; ii) the SAR's act of granting the extensions could not be regarded as a variation of the conditions of sale and therefore there was no need to afford the chargor a right to be heard; iii) if the chargee does not object to an extension of time, the SAR is entitled to extend time; iv) if the purchasers had failed to inform and serve their applications for extensions to the chargor, and if the chargor was not afforded the opportunity of being heard before the SAR had granted the extensions, then these omissions are to be regarded as mere irregularities which are curable under O. 2 Rules of the High Court 1980 (the "RHC" ).

**Held:**

- [1] From the facts, the conduct of the chargor does not suggest that he has abandoned his objections. It is sufficient if objections are raised in these proceedings by way of affidavit, as the chargor had done. As long as the court is satisfied that there are no irregularities then the sale may be confirmed. Otherwise, there is no concluded sale and nothing to set aside.
- [2] As the conditions of sale authorised the SAR to grant one extension of 14 days only, any further or other extension would have amounted to varying or altering the conditions of sale. Based on *M&J Frozen Food Sdn Bhd & Anor v. Siland Sdn Bhd & Anor* the terms or conditions of sale may be varied but before such variation could be effected, the chargor must be afforded the opportunity to be heard on it.
- [3] With regards to the issue of extension of time, the purchasers submitted that the chargee had consented to the extension because the chargee's solicitors had written letters to the SAR requesting for the extension on behalf of the purchasers. However, a proper reading of the letters does not reveal that the solicitors had said that they acted for the chargee, or that they had been instructed to apply for the extension by the chargee or that the chargee had consented to the extension. In light of these facts, it would be wholly unsafe to even infer that the chargee consented to the extension of time.

- a** [4] The right of a landowner to be heard on matters concerning the sale of his land is a substantive right and cannot be regarded as a matter of mere procedure, the breach of which is to be regarded as a curable irregularity under RHC. The same principle applies on failure to afford the chargor the right to be heard because the failure complained of here is not of a failure to observe a rule of the RHC but relates to the breach of a condition of sale.
- b**

*[Purchasers allowed to intervene in proceedings; Purchasers' application for declaration dismissed; Chargee's application to confirm sale dismissed.]*

**c Case(s) referred to:**

*Barclay v. Messenger* [1874] 30 LJ 351 (**refd**)  
*Buckland & Ors. v. Farmer & Moody* [1978] 3 All ER 929 (**refd**)  
*Chi Liung Holdings Sdn Bhd v. L & T Realty Sdn Bhd* [2000] 4 CLJ 8 (**refd**)  
*Development & Commercial Bank Bhd, Johore Bahru v. Kim Ming Choon* [1991] 1 CLJ 732 (**refd**)

- d** *Kuala Lumpur Finance Bhd v. Yap Poh Khian* [1991] 3 CLJ 1805 (**refd**)  
*Luck v. White* [1973] 26 P & Cr 89 (**refd**)  
*M&J Frozen Food Sdn Bhd & Anor v. Siland Sdn Bhd & Anor* [1994] 2 CLJ 15 (**fol**)  
*Malayan United Finance Bhd, Johore Bahru v. Liew Yet Lan* [1990] 1 MLJ 317 (**refd**)

- e** *Public Bank Bhd v. Phan Seng Kee & Ors* [1991] 3 CLJ 2560 (**refd**)

**Legislation referred to:**

Rules of the High Court 1980, O. 2, O. 32 r. 13(2)(b)  
 Sarawak Land Code, ss. 148(2)(c), 151A, 150(1)

- f** *For the plaintiff - Lee Bee Teck; M/s Tang & Tang, Wahap & Ngumbang*  
*For the applicants/interveners - Chew Peng Hui; M/s Battenberg & Talma*  
*Reported by Raja Vishnu Sivarajah*

## JUDGMENT

- g Clement Skinner J:**

There are two applications before me. The first is made by the plaintiff (hereafter 'the chargee') who seeks, *inter alia*, an order that a sale by public auction of land described as Lot 516 Block 68, Mukah Land District (hereafter 'the said property') to two purchasers, namely, Loi Mee King and Ling Poh Choo (hereafter 'the purchasers') be confirmed.

The second application is made by the purchasers who seek the following orders:

- i** (a) That they be allowed to intervene in the application to confirm the sale;

- (b) a declaration that the extensions of time for payment of the balance of purchase price for the said property granted by the senior assistant registrar and or the acceptance of the late payment of the same by the senior assistant registrar should not prejudice the confirmation of the sale or entitle the defendant to forfeit the balance of the purchase price paid by the purchasers. **a**
- b**

The facts leading up to both applications are these.

On 15 August 1995, the said property which is owned by the defendant (hereinafter 'the chargor') was charged to the chargee to secure banking facilities granted by the chargee to the chargor. The charge was registered as Instrument No. L.8877/1995 at the Sibu Land Registry Office on 18 August 1995. **c**

When the chargor made default in the terms of his borrowing, the chargee took steps to enforce its statutory remedy to sell the said property under s. 148(2)(c) of the Sarawak Land Code (hereafter 'the Code'). On 31 March 1998, the chargee commenced these proceedings and on 28 August 1998, obtained an order from the High Court, Sibu, that the said property be sold by public auction under the directions of the court. **d**

On 4 November 1998, pursuant to directions applied for by the chargee, the senior assistant registrar (hereafter 'the SAR') gave, *inter alia*, the following directions: **e**

- (a) That the said property be put up for sale by public auction on 28 January 1999 at the Sibu High Courts **f**
- (b) the reserved price for the said property be fixed at RM80,000;
- (c) that the draft proclamation of sale together with the conditions of sale be drawn up by the licensed auctioneer (appointed for the sale) and submitted by the chargee's solicitors for final approval by the SAR. **g**

The conditions of sale which was submitted and approved by the SAR contained several conditions, of which only three are relevant for our purposes. They are conditions 3, 4 and 6.

By condition 3, immediately after the fall of the hammer, the successful purchaser was required to pay a deposit of 10% of the amount of the purchase money in part payment thereof. **h**

Condition 4 reads:

The balance of the purchase money must be paid in by the purchaser within twenty-one (21) days from the date of the sale, to the High Court in Sibu by **i**

- a* non-negotiable bank draft or non-negotiable bank cashier's order. The purchaser may, before the expiry of the twenty-one (21) days' period (the due date) apply to the Registrar, High Court with reasons acceptable to the Registrar for a final extension of 14 days from the due date for payment of the balance of the purchase money.
- b* Condition 6 reads:
- In default of payment of the purchase money within the period allowed, the property shall be again put up for sale and the deposit, after defraying the expenses of the sale, shall be forfeited and the deficiency in price (if any) which may result on a resale or the balance of the purchase money, if there is no resale, as the case may be, shall be recoverable from the defaulting purchaser. For the purpose of these conditions, the time allowed by condition 4 of the payment of the balance of the purchase money, namely twenty-one days, shall be deemed to be the essence of the contract.
- c*
- d* The said property was duly put up for auction on 28 January 1999 but the sale was unsuccessful as there were no bidders. On 14 January 2000, pursuant to an application by the chargee, the High Court, Sibul, ordered that the said property be put up for public auction again on 14 April 2000 at a reduced reserve price of RM60,000.
- e* At the public auction held on 14 April 2000, the purchasers successfully bid for the said property for RM60,000. The events that unfolded subsequent to their bid have given rise to the second application.
- On 14 April 2000, the purchasers duly paid the deposit amounting to RM6,000, being 10% of the purchase money. The balance thereof amounting to RM54,000 was to be paid on or before 5 May 2000.
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- On 2 May 2000, the solicitors who had been acting for the chargee wrote to the SAR. They represented that "we act for and write on behalf of the successful bidders" with instructions to request the SAR for an extension of 45 days "from the date hereof" to pay the balance of RM54,000 as the purchasers are "now arranging for a bank loan".
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- On 3 May 2000, the SAR wrote back to the aforementioned solicitors advising that 14 days extension to settle the balance of the purchase money from 4 May 2000 would be allowed (hereafter 'the first extension').
- h*
- On 17 May 2000, that is one day before the expiry of the first extension, the same solicitors wrote to the SAR. In their letter they represented that "we act for and write on behalf of the successful bidders" and enclosed two cheques for RM4,500 each in part payment of the purchase money as well as a copy of a letter dated 12 May 2000 from Maybank to the purchasers offering them
- i*

a a term loan of RM45,000 and on that basis requested the SAR for another extension of 21 days until 8 June 2000 as it would take the bank that long to release the loan.

b On 23 May 2000, the SAR replied to the solicitors, granting the purchasers an extension till 8 June 2000 to pay the balance of the purchase money (hereafter 'the second extension'). On that same day, the SAR accepted the part payment of RM9,000 forwarded under cover of the solicitors' letter of 17 May 2000.

c 8 June 2000 came and went but the purchasers did not pay. It was only on 16 June 2000 that the SAR received a letter from the solicitors forwarding a cheque for RM45,000 in payment of the balance of the purchase money. On 20 June 2000, the payment was accepted by the SAR.

d On 18 July 2000, the chargee filed the first application, to confirm the sale to the purchasers. On 19 July 2000 the SAR received a letter dated 15 July 2000 from the chargor complaining, *inter alia*, that one of the purchasers of the said property was the wife of a lawyer acting for the chargee and that the purchase money had not been paid in accordance with the conditions of sale.

e On 30 September 2000, the chargor filed an affidavit opposing the application to confirm the sale of the said property to the purchasers. In his affidavit, the chargor complained that the purchasers had breached condition 4 of the conditions of sale by paying the balance of the purchase money late by reason whereof the whole purchase price should be forfeited. The chargor also asked that the chargee's application to confirm the sale be disallowed on other grounds such as the application not being served on him in accordance with f O. 32 r. 13(2)(b) Rules of the High Court ('RHC'), that one of the exhibits to the application was not signed and certain outgoings in respect of the said property could not be defrayed from the proceeds of sale.

g It was to meet the objections of the chargor that the purchasers filed the second application.

h Before considering the two applications and the submissions of counsel, one thing needs to be said. It is this: it is not disputed that when the purchasers applied to the SAR and were granted the first and second extension of time to pay the purchase money, the chargor was not notified of such applications or given an opportunity to be heard on them before the extensions were granted by the SAR.

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- a* Learned counsel for the purchasers gave several reasons why the sale to the purchasers should be confirmed and the objections of the chargor rejected.

- b* First, it was said that the chargor must be taken, by his conduct, to have abandoned his objections. The conduct of the chargor which, according to counsel, gives rise to this inference are: the chargor's failure to attend the hearing of the application for sale of his land, although served; he did not attend before the SAR when directions for sale were given, although served; he did not turn up for the hearing of these two applications; he has not taken any steps to set aside the extension granted by the SAR and neither has he taken steps to set aside the sale. According to counsel, it is insufficient for the chargor to object to the confirmation of sale by simply writing letters to the court.

- d* In my judgment, the conduct of the chargor does not suggest that he has abandoned his objections. He has not only written to the court twice but has also affirmed and filed an affidavit to oppose the confirmation of the sale. While he may have lost his right to complain about the making of the order for sale by not filing any affidavit to oppose the same or appearing at the hearing of that application, the same cannot be said about these proceedings - although he did not attend the hearing of these two applications, his affidavit is on file and before me. I am not at liberty to ignore it. It is also my view that just because the chargor has not taken steps to set aside the SAR's grant of extension of time to pay or to set aside the sale, he must be taken to have abandoned his objections. By virtue of the fact that the court is now sitting to confirm the sale, it is sufficient if objections are raised in these proceedings by way of affidavit, as the chargor has done. If the court is satisfied that there are no irregularities and confirms the sale, that is the end of the matter. If it does not, then there is no concluded sale and nothing to set aside.

- g* Second, counsel for the purchasers submitted that when the SAR granted the extensions of time to the purchasers to pay the balance of the purchase money, it was well within his authority to do so under the express terms of the conditions of sale. His act of granting such extensions could not, therefore, be regarded as a variation of the conditions of sale. Counsel further developed this argument by saying that if the extensions granted by the SAR could not be regarded as a variation of the conditions of sale, then the SAR was authorised to grant such extensions without first having to notify the chargor or obtain his consent thereto or afford him an opportunity to be heard on them. The significance of counsel's very carefully reasoned argument is this: it was advanced to get around the decision of the Supreme Court in the case of *M&J Frozen Food Sdn Bhd & Anor v. Siland Sdn Bhd & Anor* [1994] 2 CLJ 15. In that case, charged land had been sold by order of the court pursuant to the provisions of the National Land Code ('the NLC') but

conducted according to conditions of sale approved by the court. One of the conditions of sale required the successful purchaser to pay a deposit on the fall of the hammer and the balance of the purchase price within 30 days from the date of sale. The deposit was paid but the balance was not. The purchaser then applied to and obtained from the SAR an order extending the date of completion. However, the chargor was not made a party to the application to extend time, although the chargee was. Then, a year after the completion date, the purchaser forwarded the balance of the purchase price to the SAR who accepted it and issued a certificate of sale to the purchaser. On application, the trial judge declared the deposit forfeited and annulled the certificate of sale issued by the SAR. On appeal to the Supreme Court, one of the issues raised for decision was whether the court had the power to extend time for a defaulting purchaser to complete the sale and purchase agreement after the agreed date of completion had passed. In answering that question, the Supreme Court posed three further questions to itself: first, is the chargor a necessary party to an application for extension of time made to the SAR or judge? Second, is his consent or his interest relevant towards considering the application? Third, can the SAR or judge vary the conditions of sale in the absence of and/or without the consent of the chargor? The Supreme Court then considered several High Court decisions in which the power of the court to extend time on a sale of charged land as well as the rights of the chargor and chargee in such a situation was discussed. The decisions considered by the Supreme Court were those in *Malayan United Finance Bhd, Johore Bahru v. Liew Yet Lan* [1990] 1 MLJ 317; *Development & Commercial Bank Bhd, Johore Bahru v. Kim Ming Choon* [1991] 1 CLJ 732; *Kuala Lumpur Finance Bhd. v. Yap Poh Khian* [1991] 3 CLJ 1805 and *Public Bank Bhd v. Phan Seng Kee & Ors* [1991] 3 CLJ 2560. The Supreme Court then decided the issue by saying at pp. 22-23:

We agree that the terms or conditions of sale may be varied, if having regard to the interest of both the chargor and the chargee, it is fair to do so; but the sale being a judicial one, has to be done by the court after giving the chargor the right to be heard. As the court's power to order the sale, including the authority to fix the price and conditions of sale, is derived from the statutory provisions of the NLC after giving the chargor the right to be heard, it is manifest that any alteration of the terms or conditions must likewise be exercised.

We consider any variation of the order of sale or the terms and conditions made thereunder in the absence of and without the service of the required notice to the chargor is *ultra vires* the authority to sell under the NLC. Therefore we would, in answer to the issue raised, say that as the alteration of the completion date was made without giving notice to the chargor, the subsequent order made by the SAR was void as being *ultra vires* the NLC.

- a* Clearly then, the above case is authority for the proposition that the terms or conditions of sale may be varied, but that in doing so, the chargor ought to be served with notice of any application to do so and be afforded the opportunity of being heard thereon. Although the Supreme Court was there dealing with a case in which the court's power of sale was derived from the
- b* statutory provisions of the NLC, the principles stated in that case would, in my judgment, be equally applicable to a judicial sale of charged land in Sarawak where the court's power to order a sale of charged land, including the authority to fix the price and conditions of sale, is derived from the
- c* statutory provisions of the Code (see s. 148(2) and s. 150(1)). It was to overcome the ratio of the above decision that counsel for the purchasers submitted that what the SAR had done in our case did not amount to a variation of the conditions of sale and therefore there was no need to afford the chargor a right to be heard.

- d* So, the question that must be asked and answered is this: had there been a variation of the conditions of sale when the SAR granted the first and second extension to the purchasers? In my judgment, that question must be answered in the affirmative, in respect of the second extension. While I am prepared to accept that the first extension granted by the SAR on 3 May 2000 did not amount to a variation of the conditions of sale because condition 4 thereof
- e* had expressly authorised the SAR to do so and the chargor had been served with the notice of directions to settle those terms but had chosen not to turn up at the hearing and must therefore be taken to have agreed to it, that same reasoning cannot, unfortunately, apply to the second extension granted by the SAR on 23 May 2000. This is because the conditions of sale only authorise
- f* the SAR to grant "a final extension of 14 days from the due date for payment of the balance of the purchase money". (See condition 4). In my judgment, as the conditions of sale authorised the SAR to grant one extension of 14 days only, any further or other extension granted by the SAR would have amounted to varying or altering the conditions of sale, and before such variation or alteration could be effected, the chargor must be afforded the opportunity to
- g* be heard on it.

- To overcome the difficulty posed by the condition that the SAR could only grant one extension of 14 days, counsel for the purchasers contended that since condition 6 states that "for the purposes of these conditions, the time allowed
- h* by condition 4 for the payment of the balance of the purchase money, namely twenty-one days, shall be deemed to be the essence of the contract", time is made of essence only for the first period of 21 days and not the extension period of 14 days, so that once the SAR granted the first extension of 14 days, time became at large with the result that even if payment was not made within
- i* the extended time allowed by the SAR, late payment of the balance of the purchase money could still be accepted since time had become at large.

I regret I cannot agree with this contention. While I accept the general principle that where time has been made the essence of the contract, but the parties allow the time fixed for completion to pass and go on negotiating thereafter, then time is no longer to be regarded as of the essence of the contract and becomes at large, that general principle cannot have any application to the facts of our case which show that condition 6 allowed “for a final extension of 14 days from the due date ...”. These words, in my judgment, show that time continued to remain of the essence and had not been put at large since a final extension of a fixed period only was to be substituted for the original time. In support of what I have said, I would refer to three cases referred to by Lim Beng Choon J in *Kuala Lumpur Finance Bhd v. Yap Poh Khian* (*supra*). They are: (1) *Barclay v. Messenger* [1874] 30 LJ 351 where Sir George Jessel MR said at p. 354:

It appears to me plain that a mere extension of time, and nothing more, is only a waiver to the extent of substituting the extended time for the original time, and not an utter destruction of the essential character of the time.

(2) *Luck v. White* [1973] 26 P & Cr 89 where Goulding J said (at p. 95) that a mere extension of the period to a new fixed date would on the authorities have preserved the position that time was of the essence without fresh stipulation to that effect; and (3) *Buckland & Ors. v. Farmer & Moody* [1978] 3 All ER 929 where Buckley LJ said at p. 937:

It is common ground between the parties that if a vendor has once made time of the essence of the contract and then allows a further extension to a fixed date the time remains essential.

Before leaving this subject, I should point out that the purchasers relied on the Court of Appeal decision in the case of *Chi Liung Holdings Sdn Bhd v. L & T Realty Sdn Bhd* [2000] 4 CLJ 8, in support of their contention that there had been no variation or alteration of the conditions of sale in our case. However, I did not find that case advanced the case of the purchasers because in that case, the court found as a fact that the extension of time for 90 days to pay the balance of the purchase price was granted in accordance with condition 6 of the conditions of sale in that case, which, allowed the SAR to approve an extension of time to the purchaser if the plaintiff/chargee consented to the same. The court there found that as the plaintiff/chargee had by letter agreed to an extension of 90 days, the SAR in giving his approval to extend time had not varied or altered the conditions of sale and therefore the chargor need not be afforded an opportunity to be heard. Needless to say, that factual situation does not obtain in our case: our condition 6 is quite differently worded and as will be seen shortly, the plaintiff/chargee in our case has never agreed to extend time.

- a* Third, counsel for the purchasers submitted that if the chargee does not object to an extension of time, the SAR is entitled to extend time [see *Kuala Lumpur Finance Bhd v. Yap Poh Khian (supra)*]. According to counsel, the chargee had in our case consented to the extension of time because the solicitors who acted for the chargee wrote the letter to the BAR requesting for the extension
- b* of time on behalf of the purchasers. I regret that a proper reading of the two letters written by the solicitors to the BAR does not bear this contention out. The solicitors concerned may have been acting for the chargee bank in this charge action but in each of their letters to the SAR, they never adverted to this fact. This is what they said:
- c* (a) (In the letter of 2 May 2000) “We act for and write on behalf of the successful bidders Mdm. Ling Poh Choo and Mdm. Loi Mee King with instructions to request your honour ... .
- (b) (In the letter of 23 May 2000) “We act for and write on behalf of the successful bidders Mdm. Ling Poh Choo and Mdm. Loi Mee King with instructions to reply ... .
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- Nowhere in their two letters did the solicitors say they acted for the chargee, nor did they say they had been instructed to apply for the extension by the chargee or that the chargee had consented to the extension, and their two letters
- e* were not copied to the chargee/bank for information either. While I accept that in an appropriate case the court will impute the knowledge of a lawyer onto his client, we are not here concerned with knowledge but consent and in the light of the facts outlined above, it would be wholly unsafe to even infer, let alone find that the chargee consented or agreed to the extension of
- f* time.

- Fourth, counsel for the purchasers submitted that if the purchasers had failed to inform and serve their applications for extensions on the chargor, and if the chargor had not been afforded an opportunity of being heard before the SAR had granted the extensions, then those omissions are to be regarded as mere irregularities which are curable under O. 2 RHC and should be cured as the chargor has suffered no prejudice and he has shown disinterest in these proceedings.
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- With respect, it would be plainly wrong in law if I were to accede to this argument. In my judgment, the right of a landowner to be heard on matters concerning the sale of his land cannot be regarded as a matter of mere procedure, the breach of which is to be regarded as a curable irregularity under the rules. It is, in my view, a substantive right which, according to the view taken by the Supreme Court in the case of *M&J Frozen Food*, arises as an incident to the court’s power to order a sale under the statutory provisions of
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the NLC, which in our case, means the Sarawak Land Code. It is also my view that in the context of a sale of charged land, the failure to afford the chargor a right to be heard on the question of an extension of time to pay the balance of the purchase price cannot be regarded as a curable irregularity under O. 2 RHC because the failure complained of here is not of a failure to observe a rule of the RHC but relates to the breach of a condition of sale.

It was lastly submitted on behalf of the purchasers that in deciding these applications, I should be slow to follow that body of authority emanating from West Malaysia which have consistently recognised a chargor's right to be heard when the terms and conditions of sale of charged land are being varied. It was said that a sale of charged land in Sarawak cannot be treated on the same footing as a sale of charged land in West Malaysia for at least two reasons:

- (a) in West Malaysia, a sale must be by public auction whereas in Sarawak, at least since 1994, far more liberal provisions apply because under s. 150 of the Code, a sale may be effected by public auction, tender or such other mode as may be directed by the court; and
- (b) under the NLC, when the court orders a sale, the court may also give directions for the sale with the chargee preparing the conditions of sale in accordance with the terms of the order for sale and any determination thereunder by the SAR, whereas in Sarawak the court may order the sale but does not deal with the conditions of sale - that is dealt with by the SAR and this explains why extension of time is sought from the SAR.

I regret I find no merit in these submissions. The differences that have been pointed out are not of such a nature as would lead a court to conclude that they indicate that in Sarawak, when land is ordered to be sold pursuant to the provisions of the Code, the chargor's right to be heard on a matter which directly affects his interest, namely, the variation of a condition upon which his land is sold is to be regarded as having been abrogated.

For the reasons given above, I find that the SAR had no authority to grant the second extension without having first afforded the chargor the opportunity of being heard on the matter. I further find that the purchasers had been in breach of the conditions of sale when they failed to pay the balance of the purchase money within the period of first extension allowed. The conditions of sale must be given effect to, namely, "in default of payment of the purchase money within the period allowed, the property shall be again put up for sale and the deposit, after defraying the expenses of the sale, shall be forfeited ...".

- a* Before I conclude, I wish to say that I found no merit in the other complaints raised by the chargor - I do not see why the wife of a lawyer who acts for the chargee cannot bid at a public auction, held under the directions of the court and the conditions of sale of which are approved by the court. I also find the provisions of O. 32 r. 13(2)(b) RHC irrelevant to what has happened here.
- b* With regard to the unsigned summary of expenses of sale, the exhibit is merely a summary and whether or not it is signed cannot affect its character. As regards the objection that certain rates and surcharges levied by the Dalat/Mukah District Council against the said property are not deductible from the proceeds of sale, s. 151A of the Code provides that the chargor/owner of land is responsible for the same.
- c*

I must also make it clear that there is no legal basis for the chargors' insistence that the whole of the balance of the purchase price must be forfeited. The conditions of sale does not authorise that course.

- d* In the result, I find that whilst the purchasers had the right to intervene in these proceedings, for the reasons already given, their application for the declarations sought must be dismissed. The chargee's application to confirm the sale must likewise be dismissed. These will be the following orders:

- e* 1. The said property shall be again put up for sale on the same terms and conditions of the order dated 4 November 1998 and 14 January 2000 on a date to be fixed by the senior assistant registrar.
2. The deposit of RM6,000 after defraying the expenses of the sale shall be forfeited and paid towards the account of the chargor with the chargee.
- f* 3. The balance of the purchase price is to be returned to the purchasers.

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